

### **Remarks**

Claims 1-32 were present in the application as filed. A Preliminary Amendment was filed concurrently with the application amending paragraph 1 of the specification to provide updated cross-reference to related applications information. An Amendment filed on December 11, 2003 provided a substitute Abstract. An Office Action with an Election/Restriction Requirement was mailed on December 13, 2005. The Election/Restriction Requirement is addressed below. The claims now pending in the application are: 1-32.

### **Election/Restriction Requirement**

The Office Action imposed restriction under 35 USC §121 between two groups of claims:

Group I: Claims 1-23, 32 drawn to a process of making formula IA or IB employing microorganisms selected from genera of *Stemphylium*, *Gliocladium*, etc. Election of this Group would require a further election of a single disclosed species of microorganism and the processing steps including production, purification and continuous processing of the process.

Group II: Claims 24-31, drawn to a process of making formula IA or IB employing *Cunninghamella bainieria*.

### **Responsive Action**

Without acceding to the propriety of the Election/Restriction Requirement, and for the purposes of expediting prosecution of the application, Applicants hereby elect the invention of Group I (Claims 1-23, 32) drawn to a process of making formula IA or IB employing microorganisms selected from genera of *Stemphylium*, *Gliocladium*, etc. This election is without traverse and without prejudice to Applicants' rights to pursue any non-elected subject matter in one or more related application(s).

As to the election of species, Applicants elect the microorganism species of *Stemphylium consortiale*, where the process involves incubating that is carried out at a temperature of 29 °C, pH of 7, for a period of 168 hours (7 days), and prior to the incubating, the microorganism is subjected to multi-stage liquid culture induction (See Table 2, Examples 2 and 4). Claims that read on the species include: 1, 2, 17-23, and 32.

### Conclusion

In view of the above remarks and responsive action, reconsideration and further examination is respectfully requested.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Edward Timmer, Applicants Attorney at (518) 452-5600 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:

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Date of Deposit: January 11, 2006

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